

COLLECTIONS GUIDELINES

3/01/13

Monies are due to the Department for a variety of reasons (fines, taxes, fees, etc.). Collections for the Department are governed by Louisiana Administrative Code 4:XIII.Chapter 1.

Consistent and uniform department wide guidelines that provide for the systematic collection of monies owed to the Department and the closing of accounts that are uncollectible are detailed below.

I. TIME LIMITATIONS ON COLLECTION (PRESCRIPTIVE PERIODS)

The Louisiana Civil Code (La. C.C.) establishes a prescriptive period (time limit) for filing suit to collect on delinquent accounts and other monies owed to the Department. It is imperative that Department personnel know, understand and can properly calculate prescriptive periods for collections purposes. If there are any questions regarding prescription, contact the legal section. For the Department, the applicable prescriptive periods are as follows:

A. ONE YEAR PRESCRIPTION (La. C.C. 3492, 3493)

- Available for damages as a result of an accident, tort or damage to immovable property.
- One year prescriptive period begins from the date the damage occurred or the date in which the Department/ employee knew or should have known of the damage. However, garnishments will not interrupt prescription.
- Example: Damage to Department equipment as a result of an accident caused by the negligence or fault of a nonemployee.

B. THREE YEAR PRESCRIPTION (La. C.C. 3494)

- An action on an open account or for recovery of compensation for services rendered, including fees.
- Three year prescriptive period begins from the date the payment is due or the last date of payment (date on check) on the account. Prescription may be interrupted by a payment or by a payment schedule if agreed upon by both parties. However, garnishments will not interrupt prescription.
- Example: An open account occurs when goods are sold or services are rendered without a contract between the individual and the Department such as buying tree seedlings from the Forestry Office and the Department then billing the person.
- Example: The Department's fees for the costs of inspecting meat, eggs, etc., or the costs of licenses and permits issued by the Department.

C. FIVE YEAR PRESCRIPTION (La. C.C. 3498)

- An action on a negotiable or non-negotiable instrument or promissory note.
- Five year prescriptive period begins from the last date of payment (date on the check) on the account or the date the payment is due. Prescription may be interrupted by a payment or by a payment schedule if agreed upon by both parties. However, garnishments will not interrupt prescription.
- Example: A check returned for NSF or a promissory note issued to the Department.

D. TEN YEAR PRESCRIPTION (La. C.C. 3499 & La. Attorney General)

- All other personal actions including Findings of Facts and Conclusions of Law (FOFCOL) and court judgments.
- Ten year prescriptive period from the date of the penalty being due. Prescription may be interrupted by a payment or a payment schedule if agreed upon by both parties. However, garnishments will not interrupt prescription.
- Example: Fines and penalties imposed after an adjudicatory hearing.

II. **ACTIONS PRIOR TO TURNING OVER TO LEGAL DIVISION**

- A. Prior to considering whether a debt is eligible to be turned over to the legal section for collections, certain actions by program personnel must be taken.

1. All accounts should be reviewed by program personnel in order to determine the applicable prescriptive date. In the event that there is a question as to which prescriptive period applies, contact the legal section. If program personnel determine that a debt has prescribed, contact the legal section for proceeding to the write off procedure.

2. In accordance with the Department's agreement with Department of Justice (DOJ/AG), a total of three notices must be sent to the debtor prior to submission to DOJ.

a) Adjudicated Matters

(1) The first notice to the debtor must be sent via *certified letter* with a return receipt requested. After an adjudication, the program personnel must give the Revenue Accountant Manager the FOFCOL letter with the date indicating the respondent is due to pay the money (so the RAM may calculate the 30 day period) and generate the invoice. If a payment schedule is made, the program personnel are responsible for the proper notification being given to RAM regarding the schedule. The invoice will then be transmitted by RAM to the program personnel. The FOFCOL along with a copy of the first invoice will be mailed by the program personnel (certified). Program

personnel shall transmit a copy of the certified letter and invoice to the RAM.

(a) If the certified letter comes back as “unclaimed” or “unable to forward” service is considered proper. Proceed with sending the second notice (see a(2) below).

(b) If the certified letter comes back as “invalid address,” “moved, no forwarding address,” “no such address” the program personnel must attempt to get a good address and resend the certified letter! Program personnel are responsible for communicating with the RAM that there may be a delay in the next invoice due because of the certified letter status.

(2) The second notice will be sent by OMF 60 days after the debt is due. OMF will transmit a copy of the invoice to the program personnel.

(3) The third notice will be sent by OMF 90 days after the debt is due. OMF will transmit a copy of the invoice to the program personnel.

b) Non adjudicated matters

(1) The first notice to the debtor will be generated and sent by OMF. OMF will transmit a copy of the invoice to the program personnel.

(2) The second notice with an attached **certified letter** to the debtor will be generated and sent by OMF. OMF will transmit a copy of the certified letter and invoice to the program personnel.

(a) If the certified letter comes back as “unclaimed” or “unable to forward” service is considered proper. Proceed with sending the third notice (see b(3) below).

(b) If the certified letter comes back as “invalid address,” “moved, no forwarding address,” “no such address” the program personnel must attempt to get a good address and resend the certified letter! Program personnel are responsible for communicating with RAM that there may be a delay in the next invoice due because of the certified letter status.

(3) The third notice will be sent by OMF 90 days after the debt is due. OMF will transmit a copy of the invoice to the program personnel.

3. If no payments have been made to the Department after three invoices, the accounts must be turned over to the legal section.

B. Prior to sending to the legal section, the program personnel shall ensure that the

proper notifications have been sent.

III. COLLECTION PROCESS

A. The Department incurs many different types of debt. It is important to understand that the documents necessary for the legal section to process for collections depends on the type of debt itself.

AS A GENERAL RULE, ANY DOCUMENTATION DIRECTLY RELATED TO THE DEBT ARE NECESSARY. (e.g. There are instances in which sending a letter which sets up a payment schedule may interrupt prescription.)

For example, in an adjudicated case turn over to the legal section at a minimum the following documents are required:

1. The call to hearing letter with certified mail receipt.
2. The exhibits introduced at the hearing (along with a cover sheet describing the name of the document and the exhibit number).
3. The FOFCOL letter with certified mail receipt.
4. The first, second and third invoices.

B. When the legal section turns over debts to the DOJ, both the suspended and unsuspended portions will be pursued.

C. If the legal section determines that the account has prescribed, then the account must be closed and written off the books. The write off form will be prepared by the legal section and the assistant commissioner will have to sign a copy of the form.

D. If the legal section determines the account has not prescribed and the proper documentation is attached, the legal section will then turn the account over to DOJ.

E. The legal section will not turn over any debts for less than \$200 to DOJ (unless there are extreme circumstances which the legal section determines warrant pursuing).

IV. COMMUNICATION AFTER DEBT PLACEMENT AT DOJ

A. Both DOJ and the Department's accounting section prepare monthly reports. These reports are vital to the communication necessary to ensure that all pertinent information is being exchanged.

B. Accounting prepares monthly reports (at the beginning of each month) which will be sent to each assistant commissioner (and LAFA) by accounting. The assistant commissioners are responsible for disseminating the information to their program personnel.

C. DOJ prepares monthly reports which will be disseminated to the assistant commissioners by the legal section (including J4s, monthly reports, placements and quarterly reports). The assistant commissioners are responsible for disseminating the information to their program personnel.

D. It is the responsibility of the program personnel to cross check both monthly reports for any inaccuracies or discrepancies between the two reports. If a discrepancy is found, contact the legal section within five (5) days of discovery.

V. BANKRUPTCY NOTICES

A. If a notice of bankruptcy is received by program personnel, please verify that money is owed to the Department by the person or company filing the bankruptcy.

1. If a debt is verified, then the bankruptcy notice and all information regarding the debt are to be sent to the legal section.
2. If the office or section receiving the bankruptcy notice cannot verify a debt then send the notice to the legal section so it may review the collections records. The legal section will send the bankruptcy notice to the assistant commissioners for further review.

B. A secured debt placed in bankruptcy should be referred to the legal section.

C. Any debt not secured by a mortgage or security interest is an unsecured debt. The likely hood of receiving any payment on an unsecured debt in bankruptcy is slim. Therefore, the debt may likely be written off.

VI. UNCOLLECTIBLE ACCOUNTS

A. In accordance with the La. Administrative Code, an account is uncollectible and may be written off when:

1. The amount is deemed uncollectible—age of the account; or
2. The amount of the debt is less than \$200.00 and debtor fails to pay after a reasonable collection effort has been made; or
3. All reasonable collection efforts have been exhausted—private collection agency, attorney general's office and/or state's debt offset process; or
4. The debtor cannot be located or a discharge of bankruptcy has occurred; or
5. The debt has prescribed; or

6. The debtor is deceased and there is no estate.

B. If a debt has been declared uncollectible because the debtor was unable to be located or did not have sufficient assets at that time, it may still be pursued if the debtor is found or later obtains assets (unless the debt has prescribed).

VII. ACCURACY

THE PROPER NAME OF THE DEBTOR IS EXTREMELY IMPORTANT!

Please pay close attention to the individual/entity that is licensed/permitted/certified. The licensed individual/entity incurs the debt. The Department does not want any confusion as to who is being pursued for money owed. If you have any questions, please contact the legal section.